Single Bench

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 301 Of 2005.

PETITIONERS :- 1. Basant Kumar, aged 42 years, son of Lachhiram Yadav, resident of Bhogaha Para, Shivrinarayan, Tahsil and Distt. Janjgir,

PLAINTIFFS

2. Pankaj Kumar, aged 45 years, son of Jagmohandas Doshi, Caste Gujrati, ward no. 2, Akaltara, Tahsil and District Janjgir,

V E R S U S

RESPONDENTS :- 1. Chintamani, aged 37 years, son of Khemraj, Caste Soni, Village Bhogaha Para, Shivrinarayan, Tahsil and Distt. Janjgir (M.P.) (now Chhattisgarh),

DEFENDENT

2. Civil Judge Class I, Janjgir, District Janjgir (Chhattisgarh).

PETITION UNDER ARTICLE 227 OF CONSTITUTION OF INDIA

DETAILS OF PETITION :-

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक W.P. 301 **सन्** 2005

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

11.7.2005

Mr. H.B. Agrawal, Sr.Counsel with Mr. V. Tiwari, Counsel for the petitioenrs.

Mr. V.K. Pandey, counsel for respondent No.1.

The petitioner has preferred this writ petition under Article 227 of the Constitution of India questioning the legality and propriety of order dated 14.1.2005 passed by leanred Civil Judge Class-I, Janjgir whereby learned Civil Judge has rejected the application of the petitioners herein filed under Order 2 Rules 3 & 4 of the C.P.C. for consolidation of Civil Suit No.83A/96 filed by respondent No.1 herein and Civil Suit No.5A/98 filed by the petitioners herein.

Brief facts leading to filing of this petition are that in the year 1992 respondent No.1 herein filed a civil suit bearing Civil Suit No.83A/96 for grant of permanent injunction against the petitioners herein in respect of the property mentioned in Schedule-A of the plaint that the defendants / petitioners herein stating that defendants /petitioners herein be restrained by way of permanent injunction from interfering with the possession of respondent No.1 and they be restrained from dispossessing respondent No.1 from the suit property. In that suit written statement has already been filed by the petitioners herein. Respondent No.1 herein has already closed his evidence and the matter is fixed for evidence of petitioners herein.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Thereafter, in the year 1998 the petitioners herein filed another civil suit in respect of the same property for declaring the sale deed dated 27.2.1985 as void and non-existence, as the same is forged and further possession of the property be delivered to the petitioners herein. In that suit also written statement has been filed by respondent No.1 herein and after framing of issues the matter is fixed for evidene of the petitioners herein i.e. the plaintiff. During the pendency of this suit, the petitioners herein moved an application for consolidation of both these suits but the same has been rejected by the court below.

It is true that the both these suits pertains to same property and between same parties. In the strict sense the provisions of Section 10 are not applicable as the petitioners' suit was filed later in time i.e.6 years after the suit filed by respondent No.1, therefore, the previous suit cannot be stayed.

Now coming to the question of consolidation of both the suits, even though the subject matter of both these suits is same property but the issues involved in these suits are not directly and substantially in issue, for the reason that previous suit was instituted for permanent injunction, restraining the petitioners herein from dispossessing respondent No.1 herein and not to cause interference in his possession, whereas, in the suit filed by the petitioners herein after six years of the suit filed by respondent No.1

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the subject matter is the sale deed dated 27.2.1985 which was executed in favour of respondent No.1 by Ramtin Bai & Mangli Bai, who were the original owners of the land in question.

The injunction suit is to be decided merely on the ground of possession, whereas, in the later suit, which has been filed by the petitioners, the main question which is to be decided is that whether sale deed dated 27.2.1985 is forged, void and non-effective. Therefore, I am of the opinion that issues involved in both the suits are not directly and substantially same, as such the proceedings cannot be consolidated merely on the ground that both the suits relates to same properties and between same parties.

Learned Sr. Cousnel for the petitioners argued that in the injunction suit also the issue regarding the title has been framed, which could not be framed and title could not be decided in an injunction suit. For that purpose, the petitioners are at liberty to move trial court in accordance with law.

In the result, the petition of the petitioners is liable to be dismissed and it is accordingly, dismissed at the admission stage itself.

Consequently, M.(W.)P. No.264/05 & I.A No.5349/05 stand disposed of.

Sd/-
L.C. Bhadoo
Judge

Roshan

(पीछे देखिये)